In the High Court of Punjab and Haryana at Chandigarh

CWP No.18712 of 2006

Date of Decision: 27.11.2006

Devinder Kumar

…Petitioner

Versus

State of Haryana and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. R.K. Malik, Advocate,

for the petitioner.

JUDGMENT

M.M. KUMAR, J.

The petitioner has been working on the post of Inspector and has challenged order dated 21.10.2006 (P-19) passed by the Director General of Police, Haryana, respondent No. 2. He has reviewed the earlier order passed by his predecessor dated 31.7.2003 (P-13) vide which the Director General of Police had set aside the punishment of stoppage of two increments with permanent effect. The order dated 21.1.1999 (16.1.1999?) (P-8) passed by the Appellate Authority, vide which the punishment of dismissal from service was

reduced to that of stoppage of two increments with permanent effect, has been restored.

Brief facts of the case are that the petitioner was enrolled as an Assistant Sub Inspector in the Haryana Police force on 5.8.1985. He was promoted as Sub Inspector and Inspector on 2.12.1992 and 13.12.2000 respectively. He was charge sheeted to which he submitted his reply. The Enquiry Officer was appointed to enquire into the allegations that on 18.10.1995 when he was posted as Incharge Police Post, Fatehabad City, one Dharampal @ Pappu s/o Jammu Ran ode Rajput community, was arrested after falsely implicating him in case No. 626, dated 18.10.1995, under Sections 292/294 IPC, Police Station Fatehabad. In the *Jamma-talashi* of Dharampal one porn book and Rs. 1,500/- were recovered whereas the petitioner has only shown the recovery of Rs. 150/- and the porn book. Ultimately, Dharampal @ Pappu was acquitted after making confession. Thereafter, Arjun Singh and Munshi Ram, who had got Dharampal @ Pappu arrested through the petitioner, murdered him on 14.11.1995 at Jamalpur Sekha railway line and a case bearing No. 209, dated 14.11.1995, under Sections 302/201/120B/34 IPC was registered at Police Station GRP Hissar. During the investigation of that case when ASI Mehtab Singh of GRP Jakhal gone through the decision of Case No. 626/95 of Police Station Fatehabad, it was found that the petitioner had not shown the actual amount of Rs. 1,500/- and only Rs. 150/- were shown to be recovered in the *Jamma-talashi* along with a porn book. Later on, the accused Arjun Singh and Munshi Ram also admitted that they had falsely implicated and had

got Dharampal @ Pappu arrested after paying bribe of Rs. 2,000/- to the petitioner. The Enquiry Officer returned the guilt against the petitioner and thereafter while agreeing with the findings of the Enquiry Officer, a show cause notice, dated 23.1.1998 (P-2) was issued to him by the Superintendent of Police, Hisar, to the effect as to why he should not be reverted to the substantive rank of ASI. He submitted his reply on 9.2.1998 (P-3). Subsequently, on transfer of the petitioner to Bhiwani District another show cause notice dated 5.5.1998 was issued by the Superintendent of Police, Bhiwani, proposing as to why the penalty of dismissal from the force be not imposed upon him (P-4). The petitioner also submitted a detailed reply dated 27.5.1998 (P-5). After hearing the petitioner, the Superintendent of Police, Bhiwani, passed a detailed order dated 18.9.1998 inflicting punishment of dismissal from service upon the petitioner with immediate effect (P-6).

Against the afore-mentioned order of dismissal the petitioner preferred an appeal before the Deputy Inspector General of Police, Hisar Range, Hisar (P-7), who modified the order of the punishing authority, vide order dated 16.1.1999 (P-8) and a punishment of stoppage of two annual grade increments in future with permanent effect was imposed upon him. The revision-cum-mercy petition, dated 20.2.1999 (P-9) filed by the petitioner was rejected by the Director General of Police, Haryana, vide order dated 26.1.2000 (P-10). However, in exercise of powers vested in it by virtue of Rule 16.28 of the Punjab Police Rules, 1932 (as applicable to Haryana), the Director General of Police, Haryana, issued a show

cause notice dated 28.7.2000, to the petitioner proposing that the punishment of stoppage of two future annual increments with permanent effect is not proportionate to the misconduct and the same is liable to be enhanced to that of dismissal from service (P-11). Challenging the aforementioned show cause notice, the petitioner filed C.W.P. No. 10959 of 2000, which was dismissed by a Division Bench of this Court vide order dated 16.11.2000 (P-12). It is claimed that after dismissal of the writ petition, the petitioner filed detailed reply to the show cause notice and requested that the punishment order already awarded is also not justified. The Director General of Police, Haryana, vide order dated 31.7.2003, while considering the mercy petition submitted by the petitioner, set aside the punishment of stoppage of two increments with permanent effect (P-13).

On 17.8.2006, the Director General of Police, Haryana again issued a show cause notice as to why the order dated 31.7.2003 be not withdrawn and the punishment of stoppage of two increments be not imposed (P-14). Thereupon the petitioner sought certain documents vide his representation dated 29.8.2006 (P-15). Some of the documents such as copies of charge, finding report, punishing order dated 18.9.1998, order dated 26.6.2000 passed on the revision petition and order dated 31.7.2003 passed on mercy petition, were supplied to the petitioner vide letter dated 12.9.2006 (P-16) and he was again directed to submit his reply to the show cause notice within three days. The petitioner made another representation dated 30.9.2006 for supply of remaining documents as detailed therein (P-18).

On 21.10.2006, the Director General of Police, Haryana set aside the order dated 31.7.2003 and restored the order of the Appellate Authority vide which the punishment of stoppage of two increments with cumulative effect was imposed (P-19).

After hearing the learned counsel for the petitioner, we are of the considered view that this petition lacks merit and is liable to be dismissed. It is well settled that the quasi judicial authorities like the Director General of Police are the creatures of the statute and they can exercise power only in accordance with such a statute. In the present case, the Punjab Police Rules, 1934 (as applicable to Haryana) are applicable. Rule 16.28 of the Rules clothe the Director General of Police with power of overall supervision which seemingly appears to be power of review but it actually does not confer any such powers on him. The Rule reads as under:

> "16.28. Powers to review proceedings.- (1) The Inspector General, a Deputy Inspector General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same or make further investigation or direct such to be made before passing orders. (The State Government may also call for the records and review the awards made by the Inspector General of Police Punjab or by any other authority subordinate to him.)
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> (2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded

as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced."

A perusal of the afore-mentioned rule makes it clear that the Director General of Police and other officers have been clothed with the power to call for the records of any case for going through the orders passed by their subordinates. They have also been empowered to confirm, enhance, modify or annul any such order or issue directions for further investigation. Similar power has been given to the State Government. In the present case, the Director General of Police on receipt of 'mercy petition' from the petitioner had passed the order dated 31.7.2003 (P-13) by setting aside the order dated 16.1.1999 (P-8). The afore-mentioned provision could not be construed to mean that the Director General of Police is entitled to review its own order. The expression 'review' used in Rule 16.28 only connotes the supervisory power of the superior officers over inferior and subordinate officers. In any case the principle of reasonableness would require that an order passed as far as back as more than 4 years is not re-opened because it would violate all limits of reasonableness.

Even otherwise it is patent from the record that the

Superintendent of Police after holding enquiry into the charges had inflicted on the petitioner the punishment of dismissal from service vide order dated 18.9.1998 (P-6). The afore-mentioned order was modified in appeal on 16.1.1999 (P-8) and punishment of stoppage of two future increments with permanent effect was imposed. Even the revision petition filed by the petitioner was dismissed by the Director General of Police, vide order dated 26.1.2000. It was almost after more than 4 years that the Director General of Police entertained the 'mercy petition' and set aside the appellate order dated 16.1.1999, vide order dated 31.7.2003 (P-13) by assuming the jurisdiction of 'review' which does not flow from Rule 16.28 of the rules.

The argument raised by Mr. R.K. Malik, learned counsel for the petitioner is that the impugned order dated 21.10.2006 (P-119) has been passed without furnishing the petitioner various copies of documents as demanded by the petitioner vide application dated 29.8.2006 (P-15) and 30.9.2006 (P-18). We are not impressed with the argument raised because if such an argument is accepted then the resultant effect would be that the order dated 31.7.2003 (P-13) which is sought to be annulled by the impugned order dated 21.10.2006 (P-19) would stand revived. It is well settled that if by exercise of jurisdiction under Article 226 of the Constitution an order is quashed on the ground of breach of natural justice then the Court is not bound to exercise such jurisdiction if it would result into restoration of an earlier order of the Government which had also been passed in breach of the principles of natural justice or which was otherwise illegal. The aforementioned proposition has came up for consideration before

Hon'ble the Supreme Court in the case of **Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828**, which is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because it has been passed against the petitioner in breach of natural justice. A pointed question was framed and considered by Hon'ble the Supreme Court in the case of **M.C. Mehta v. Union of India, (1999) 6 SCC 237,** which is as under:

> "(2) Whether this Court is not bound under Article 32 (or the High Courts under Article 226) to quash an order of the Government on the ground of breach of natural justice if such an action will result in the restoration of an earlier order of the Government which was also passed in breach of natural justice or which was otherwise illegal?"

After referring to its earlier judgment in the case of Gadde Venkateswara Rao (supra), their Lordships observed as under:

> "The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.

Apart from dealing with the breach of principles of natural justice, their Lordships also considered the question whether the interference of the Court under Article 226 of the Constitution would result into restoration of another order which was not legal. The Supreme Court in M.C. Mehta's case (supra) has made a reference to the case of **Mohd. Swalpleh v. IIIrd ADJ, (1998) 1 SCC 40**. The views of their Lordship is discernible from para 18 of the judgment in M.C. Mehta's case (supra) and the same reads as under:

> "We would next refer to another case, where though there was no breach of the principles of natural justice, this Court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In Mohd. Swalleh v. IIIrd ADJ (1988) 1 SCC 40 which arose under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,1972, the prescribed authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of Section 43(2)(rr) of the Act. The District Court entertained an appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the

> High Court refused to interfere. On further appeal by the tenant, this Court accepted that though no appeal lay to the District Court, the refusal of the High Court to set aside the order of the district Judge was correct as that would have restored the order of the prescribed authority, which was illegal."

When the principles enunciated in the afore-mentioned judgments of Hon'ble the Supreme Court are applied to the facts of the present case then it becomes evident that if this Court exercise jurisdiction under Article 226 of the Constitution quash the order dated 21.10.2006 (P-19) it would lead to unnecessary consequence of restoration of the order dated 31.7.2003 (P-13). The afore-mentioned order could not be sustained in the eyes of law as it is wholly unreasonable because the same is without jurisdiction and it has been passed after the expiry of more than four years. Therefore, we are not impressed with the argument raised by Mr. R.K. Malik, learned counsel for the petitioner.

For the reasons mentioned above, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

27.11.2006
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